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CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1940.
No. 212.

HURON HOLDING CORPORATION, a corporation, and NATIONAL
SURETY CORPORATION, a corporation,
Petitioners,

vs.

LINCOLN MINE OPERATING COMPANY, a corporation,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT.

DANIEL GORDON JUDGE,
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New York, N. Y.

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The respondent's brief appears to be based upon the theory that the attached judgment was not a final one because it was in the process of appeal and therefore, was not attachable. This contention was argued by the respondent in the Circuit Court and overruled in the following portion of that Court's opinion (Tr., p. 77):

"So far as Lincoln's claim of the invalidity of the New York attachment of a federal or any other foreign judgment is based on the contention that a judgment of a trial court ceases to be final when on appeal, it can not be sustained. *Deposit Bank v. Frankfort*, 191 U. S. 499, 511. Supersedeas simply stays execution of the judgment but does not change its final quality."

Notwithstanding this, each of the four points raised in the argument of respondent's brief is predicated upon

the foregoing contention which has already been decided by the Circuit Court in favor of the petitioners.

The inventory of the New York attachment (Tr., pp. 26-27) clearly showed that the District Court judgment was so attached "*subject to the rights of said Huron Holding Corporation on the appeal taken by it from said judgment and now pending in said court.*" Indeed, no attempt was made by Huron to seek a satisfaction of the District Court judgment until *after* the mandate of affirmance from the Circuit Court had been filed on March 13, 1939 (Tr., pp. 6-8). As a matter of fact, Huron's motion for satisfaction of the judgment specifically set forth and referred to the mandate of affirmance of the Circuit Court (Tr., pp. 10 and 16). Actually, the Circuit Court's affirmance was on February 7th, 1939, although not filed until March 13, 1939 (Tr., pp. 6-8). The trust company did not even attempt to obtain a judgment on its attachment against the respondent until February 25th, 1939 (Tr., pp. 21-23) and the voluntary payments by Huron on said judgment were, therefore, made after the actual Circuit Court affirmance on February 7th, 1939.

It is obvious that, for all practical purposes, all parties concerned acted on the basis of the Circuit Court's affirmance on February 7th, 1939, even though the formal mandate was not filed until March 13, 1939. This is further shown by the fact that the attorneys for the respondent collected the sum of \$2,747.27 from Huron on their attorneys' lien in partial satisfaction of the judgment, and that said attorneys gave a partial satisfaction under date of March 8th, 1939 (Tr., pp. 32-33).

The Record in this cause, therefore, clearly shows that both the trust company and Huron, instead of acting to interfere with the jurisdiction of the Idaho District and Circuit Courts as is contended by the respondent, and as was held by the Circuit Court, actually were

cognizant of and respected fully the then pending appeal. Huron waited until the Circuit Court had fully exercised its appellate jurisdiction, by filing its mandate of affirmance on March 13, 1940, before it sought the relief of a satisfaction of its judgment which was granted by the District Court and reversed by the Circuit Court.

If, for example, the District Court had granted Huron's motion for satisfaction of the judgment *before* the Circuit Court's affirmance had been made or filed, then and only then would the respondent's arguments be pertinent and applicable. But such is not the case in this cause, and the Record, instead, clearly shows that both the trust company and Huron did nothing that can be construed as an interference with the Idaho District and Circuit Courts.

It, therefore, follows that at the time Huron's motion for satisfaction of the judgment was before the District Court, the judgment had been already fully determined by the Circuit Court, its mandate of affirmance filed, and therefore, the District Court had a right to proceed accordingly. Thus, the District Court properly assumed that the attached judgment was not in any respect contingent and correctly applied the principles involved in the cases of *Erie Railroad Company v. Tompkins*, 304 U. S. 64, and *Shipment Coal Co. v. Delaware & Hudson Co.*, 245 N. Y. 567, set forth in petitioner's brief, in granting Huron's motion.

CONCLUSION.

The petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit should be granted.

Respectfully submitted,

DANIEL GORDON JUDGE,
Counsel for Petitioners.